

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 560 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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STATE OF GUJARAT

Versus

GOVINDLAL D SINDHI

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Appearance:

Shri S.T.Mehta, Additional Public Prosecutor, for the Appellant - State.

Kum. Yamini Desai, Advocate, for the Respondent (Appointed ).

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 27/09/96

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Judicial Magistrate (First Class) at Kheralu on

20th January 1994 in Criminal Case No.1756 of 1985 is under challenge in this appeal by leave of this court under Section 378 of the Code of Criminal Procedure, 1973 (the Code for brief). By his impugned judgment and order, the learned trial Magistrate acquitted the respondent herein of the offence punishable under the relevant provisions contained in Section 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954 (the Act for brief).

2. It is not necessary to set out in detail the facts giving rise to this appeal. It may be sufficient to note that the respondent herein was prosecuted for the offence punishable under the relevant provisions contained in Section 16 read with Section 7 of the Act. A complaint in that regard was filed in the Court of the Judicial Magistrate (First Class) at Kheralu. It came to be registered as Criminal Case No.1756 of 1985. It appears that the Public Analyst at Rajkot found the sample of edible oil (raida oil) to be adulterated. At the request of the respondent herein, another sample was sent to the Central Food Laboratory at Pune for analysis and report. Its report is at Exh.5 on the record of the trial. It also showed the sample to be adulterated. The charge against the respondent as the accused was framed on 17th September 1992 at Exh.105 on the record of the trial. He did not plead guilty to the charge. He was thereupon charged. After recording the prosecution evidence and after recording the further statement of the respondent - accused and after hearing the arguments, by his judgment and order passed on 20th January 1994 in Criminal Case No.1756 of 1985, the learned trial Magistrate acquitted the respondent - accused of the charge leveled against him. That aggrieved the prosecution agency. It has therefore after obtaining the leave of this court invoked its appellate jurisdiction under Section 378 of the Code for questioning the correctness of the aforesaid judgment and order of acquittal.

3. Since the respondent has remained ex parte though served, I have thought it fit to see that some assistance is rendered on his behalf for the purpose of this appeal. I have tried to ascertain from Kum. Yamini Desai sitting in the courtroom whether or not she will be in a position to get herself prepared with the case at a short notice. She showed her willingness for the purpose. I have therefore thought it fit to appoint her to assist this court in this case on behalf of the respondent - accused.

4. It transpires from the report of the Central Food

Laboratory at Pune at Exh.5 on the record of the trial that, since the seal impression on the container and the outer cover were not compared with the specimen of the seal impression sent separately to it by the Court, the learned trial Magistrate took into consideration this fact and acquitted the respondent - accused in view of the ruling of this court in the case of CLEMANT CHHOTALAL CRISTIAN v. PARSHOTTAM SAVJIBHAI PARMAR reported in 1992 (1) (33) (1) Gujarat Law Reporter at page 434.

5. It has been held in the aforesaid ruling of this court that non-comparison of seals on the outer cover and the container with the specimen of the seal impression sent separately by the Central Food Laboratory before taking up the sample for analysis would be fatal to the prosecution case. The aforesaid ruling of this court is on all fours applicable in the present case. Sitting as a single Judge, it is binding to me. Even otherwise, I am in respectful agreement therewith. In that view of the matter, the learned trial Magistrate cannot be said to have made any error in acquitting the respondent accused on the basis of the aforesaid ruling of this court.

6. In the result, this appeal fails. It is hereby dismissed.

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